



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

SDMS Document



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JUN - 2 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
URGENT LEGAL MATTER - PROMPT REPLY NECESSARY

George Cornelius, President and CEO  
Arkema, Inc.  
2000 Market Street  
Philadelphia, PA 19103-3222

Re: Demand for Reimbursement of Past Costs Expended at the Lower Passaic River  
Study Area in Essex, Hudson, Bergen and Passaic Counties, New Jersey

Dear Mr. Cornelius:

The United States Environmental Protection ("EPA") previously contacted Arkema, Inc. regarding the activities associated with the release and/or threatened release of hazardous substances, pollutants and contaminants into the six-mile stretch of the river, known as the Passaic River Study Area, which is part of the Diamond Alkali Superfund Site. A copy of EPA's past correspondence is attached for your reference. As explained in that correspondence, based on the results of previous CERCLA remedial investigation activities and other environmental studies, including a reconnaissance study of the Passaic River conducted by United States Army Corps of Engineers ("USACE"), EPA determined that evaluation of a larger area is necessary. As a result, the study area has been expanded to the entire 17-mile stretch of the Lower Passaic River and its tributaries from Dundee Dam to Newark Bay ("Lower Passaic River Study Area" or "Site").

In our prior correspondence, EPA informed you and other potentially responsible parties ("PRPs") at the site that you may be liable for money expended by EPA for response actions at the Site under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), commonly known as the federal Superfund law. In our correspondence, EPA also informed you about its plans to conduct a five-to seven year study of the Site, pursuant to its CERCLA authority, in conjunction with the USACE and the New Jersey Department of Transportation Office of Maritime Resources ("OMR") as local sponsor under the Water Resources Development Act ("WRDA"). In its correspondence, EPA requested that you become a "cooperating party" by joining other PRPs that had already agreed to fund \$10,750,000.00 towards the CERCLA Remedial Investigation/ Feasibility Study ("RI/FS").

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EPA explained that you could become a cooperating party by joining the Cooperating Parties Group and participating in an Administrative Order of Consent ("AOC"), a copy of which is available at the following website: [www.ourPassaic.org/home/aoc.pdf](http://www.ourPassaic.org/home/aoc.pdf)<sup>1</sup>. Under the terms of the AOC, EPA provided a covenant not to sue cooperating parties for past response costs incurred by EPA at the Site, subject to certain rights reserved by EPA under the AOC. EPA is currently negotiating with the Cooperating Parties Group to have them complete the RI/FS. Because you did not undertake the necessary actions to become a cooperating party, EPA is seeking reimbursement of \$2,829,802.62 in past response costs that it has expended under the authority of CERCLA to address the Site. Notwithstanding this demand, a limited opportunity still exists for you to become a cooperating party and thus avoid your potential liability for these costs, as further explained below.

#### **Explanation of Potential Liability**

Under Section 107(a) of CERCLA, PRPs may be held liable for all costs incurred by the EPA (including interest) in responding to any release or threatened release of hazardous substances at the Site, unless the PRP can show any of the statutory defenses to liability. PRPs include current and former owners and operators of a facility, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the Site, and persons who accepted hazardous substances for transport and selected the Site to which the hazardous substances were delivered.

Based on the information that EPA evaluated during the course of its investigation of the Site, EPA believes that Arkema, Inc. may be liable under Section 107(a) of CERCLA, with respect to the Site, as a current or previous owner and/or operator of a facility, and/or as an arranger who by contract, agreement or otherwise arranged for the disposal, treatment or transportation of hazardous substances at the Site. Specifically, EPA has reason to believe that hazardous substances were released from the former Wallace & Tiernan facility, located at 25 Main Street in Belleville, New Jersey, into the Lower Passaic River.

To date, EPA has taken response actions at the Site under the authority of the Superfund Program. These activities included developing a pre-expansion activity plan, conducting a preliminary PRP search, gathering historical data, developing outreach tools and workplans to implement the RI/FS.

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<sup>1</sup> The AOC was amended to include additional PRPs.

**Demand for Reimbursement of Costs**

In accordance with Section 104 of CERCLA, EPA has already taken certain response actions and incurred certain costs in response to conditions at the Site. EPA is seeking to recover from Arkema, Inc. and other non-settlor PRPs at the Site its past response costs and all the interest authorized to be recovered under Section 107(a) of CERCLA. The total amount of unreimbursed past response costs that EPA has incurred through June 22, 2004 for response activities attributable to the Lower Passaic River Study Area is \$2,829,802.62. Under Section 107(a) of CERCLA, EPA hereby makes a demand for payment from you and other non-settlor PRPs for the above amount plus all interest authorized to be recovered. Pursuant to Section 107(a) of CERCLA, as amended, interest shall begin accruing as of the date of this demand, if payment is not received within fourteen (14) days of the date of this letter.

All non-settlor PRPs are jointly and severally liable for the entire amount demanded. Partial payments will not release the payor of liability for payment of the rest of the costs that are owed to EPA. The names of other PRPs receiving this demand for reimbursement are enclosed with this letter to facilitate organization among the identified parties concerning payment. EPA encourages coordination among the PRPs to apportion costs; however, irrespective of whatever allocation the PRPs develop among themselves, EPA considers all PRPs jointly and severally liable for the amounts demanded in this letter until all costs are reimbursed.

While this letter demands that Arkema, Inc. reimburse EPA for all past response costs spent at the Site, EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at a site may be substantially limited. If you believe, and can document, that you fall within this category, please contact Kedari Reddy at EPA Region 2, 290 Broadway, 17<sup>th</sup> Floor, New York, NY 10007, phone number 212-637-3106, for information on "Ability to Pay Settlements." In response, you will receive a package of information about such settlements and forms to fill out with information about your finances, and you will be asked to submit financial records including business and possibly, personal federal tax returns as well as audited financial statements. If EPA concludes that Arkema, Inc., has a legitimate inability to pay the full amount, EPA may offer a schedule for payment over time or a reduction in the total amount demanded from you.

Some or all of the costs associated with this notice may be covered by current or past insurance policies issued to your Company. Most insurance policies will require that you timely notify carrier(s) of a claim against you. To evaluate whether you should notify your insurance carrier(s) of this demand, you may wish to review current and past policies, beginning with the date of your Company's, first contact with the Site, up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

### Settlement Opportunity

As noted earlier, a limited opportunity exists for you to avoid liability for the past costs specified in this letter by joining the Cooperating Parties Group and settling with EPA. Depending upon the resolution of ongoing negotiations with the Cooperating Parties Group, EPA anticipates entering into two separate settlements in the short term. One settlement will be for the completion of the RI/FS while the other settlement will resolve the new settlers' liability with respect to past costs. If you do not participate, you will remain liable, on a joint and several basis, for not only EPA's past costs, but also for all future study costs and/or other response costs incurred by EPA that are not reimbursed by the Cooperating Parties Group.<sup>2</sup> Also please note that your payment of the amount demanded in this letter does not release you from liability for any future response costs incurred at the Site, including, but not limited to, the costs to be reimbursed to EPA under the current AOC or pending future settlements.

We once again strongly encourage you to contact the Cooperating Parties Group to discuss your participation. You may do so by contacting:

William H. Hyatt, Esq.  
Coordinating Counsel for the Lower Passaic River Study Area Cooperating Parties Group  
Kirkpatrick & Lockhart Nicholson Graham LLP  
One Newark Center, 11<sup>th</sup> Floor  
Newark, New Jersey 07102  
(973) 848-4045  
[whyatt@klngr.com](mailto:whyatt@klngr.com)

Also, please note that, because EPA has a potential claim against you, you must include EPA as a creditor if you file for bankruptcy. EPA reserves the right to file a proof of claim or an application for reimbursement of administrative expenses.

As you may be aware, on January 11, 2002, the Superfund Small Business Liability Relief and Brownfields Revitalization Act became effective. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblrbra.htm> and review EPA guidances regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

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<sup>2</sup> It should also be noted that under the contribution provisions of CERCLA, the Cooperating Parties Group may pursue contribution claims against you for response costs reimbursed to EPA, as well as other response costs incurred by the Group.

Please send a written response to this cost recovery demand, within fourteen (14) days, to Kedari Reddy, Assistant Regional Counsel, at the address provided above. If a response from you is not received within fourteen (14) days, EPA will assume that you have declined to reimburse the Superfund for the Site expenditures, and pursuant to CERCLA, EPA may pursue civil litigation and/or administrative relief without further notice to you.

If you have any questions regarding this letter, please contact Kedari Reddy at (212) 637-3106. Thank you for your prompt attention to this matter.

Sincerely,




Raymond J. Basso  
Strategic Integration Manager  
Emergency and Remedial Response Division

Attachments

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cc: Paula Martin, Esq.  
Legacy Site Services LLC  
468 Thomas Jones Way  
Exton, PA 19341-2528

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A: Signature X </p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>George Cornelius, President and CEO Arkema, Inc. 2000 Market Street Philadelphia, PA 19103-3222</p>		<p>B: Received by (Printed Name) _____ C: Date of Delivery _____</p> <p>D: Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>6806</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.                 </p>	
<p>PS Form 3811, August 2001</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>7003 2260 0000 3242 4331</p>			